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9 **BEFORE THE**
10 **DIVISION OF MEDICAL QUALITY**
11 **MEDICAL BOARD OF CALIFORNIA**
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

12 In the Matter of the Accusation Against:

Case No. 02-2005-166930

13 THOMAS A. DANIEL, M.D.
954 Q Street
14 Sacramento, California 95814

**DEFAULT DECISION
AND ORDER**

15 Physician and Surgeon's Certificate No. G53590

[Gov. Code, §11520]

16 Respondent.

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18 **FINDINGS OF FACT**

19 1. On or about September 6, 2007, Complainant Barbara Johnston, in her
20 official capacity as the Executive Director of the Medical Board of California, Department of
21 Consumer Affairs, filed Accusation No. 02-2005-166930 against Thomas A. Daniel, M.D.
22 (Respondent) before the Division of Medical Quality.

23 2. On or about February 4, 2000, the Medical Board of California issued
24 Physician and Surgeon's Certificate No. G53590 to Respondent. The Physician and Surgeon's
25 Certificate was in full force and effect at all times relevant to the charges brought herein and will
26 expire on February 29, 2008, unless renewed.

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1 3. On or about September 6, 2007, Valerie Moore, an employee of the
2 Complainant Agency, served by Certified and First Class Mail a copy of the Accusation No.
3 02-2005-166930, Statement to Respondent, Notice of Defense, Request for Discovery, and
4 Government Code sections 11507.5, 11507.6, and 11507.7 to Respondent's address of record
5 with the Medical Board of California, which was and is 954 Q Street, Sacramento, California
6 95814. Courtesy copies were also provided to Respondent's attorney, Richard G. Fathy, at 555
7 University Avenue, #257, Sacramento, California 95825. A copy of the Accusation, the related
8 documents, and Declaration of Service are attached as Exhibit A and are incorporated herein by
9 reference.

10 4. Service of the Accusation was effective as a matter of law under the
11 provisions of Government Code section 11505, subdivision (c).

12 5. On or about September 25, 2007, the aforementioned documents were
13 returned to Complainant Agency marked "unclaimed." A copy of the envelope containing the
14 Accusation and related documents served on September 6, 2007, is attached as Exhibit B and is
15 incorporated herein by reference.

16 6. On or about September 25, 2007, Valerie Moore re-served by First Class
17 Mail the above-referenced documents to Respondent at his address of record. The declaration of
18 service is attached as Exhibit C and is incorporated herein by reference.

19 7. Government Code section 11506 states, in pertinent part:

20 "(c) The respondent shall be entitled to a hearing on the merits if the respondent
21 files a notice of defense, and the notice shall be deemed a specific denial of all parts of the
22 accusation not expressly admitted. Failure to file a notice of defense shall constitute a waiver of
23 respondent's right to a hearing, but the agency in its discretion may nevertheless grant a hearing."

24 8. Respondent failed to file a Notice of Defense within 15 days after service
25 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
26 02-2005-166930.

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1 **ORDER**

2 IT IS SO ORDERED that Physician and Surgeon's Certificate No. G53590,
3 heretofore issued to Respondent Thomas A. Daniel, M.D., is revoked.

4 Pursuant to Government Code section 11520, subdivision (c), Respondent may
5 serve a written motion requesting that the Decision be vacated and stating the grounds relied on
6 within seven (7) days after service of the Decision on Respondent. The agency in its discretion
7 may vacate the Decision and grant a hearing on a showing of good cause, as defined in the
8 statute.

9 This Decision shall become effective on December 19, 2007.

10 It is so ORDERED November 19, 2007

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12 
13 FOR THE DIVISION OF MEDICAL QUALITY
14 MEDICAL BOARD OF CALIFORNIA
15 DEPARTMENT OF CONSUMER AFFAIRS
16 CESAR A. ARISTEIGUIETA, M.D., F.A.C.E.P.
17 CHAIR
18 PANEL A
19
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24 Attachments:

- 25 Exhibit A: Accusation No. 02-2005-166930, Related Documents, and Declaration of Service
26 Exhibit B: A copy of the envelope marked "unclaimed" containing the Accusation and
27 Exhibit C: Declaration of service dated September 25, 2007
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Attorneys for Complainant

FILED
STATE OF CALIFORNIA
MEDICAL BOARD OF CALIFORNIA
SACRAMENTO September 20 07
BY Calvin Mon ANALYST

**BEFORE THE
DIVISION OF MEDICAL QUALITY
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

Case No. 02-2005-166930

THOMAS A. DANIEL, MD
954 Q Street
Sacramento, California 95814

A C C U S A T I O N

Physician and Surgeon's Certificate No. G53590

Respondent.

Complainant alleges:

PARTIES

1. Barbara Johnston (Complainant) brings this Accusation solely in her official capacity as the Executive Director of the Medical Board of California, Department of Consumer Affairs.
2. On or about February 4, 2000, the Medical Board of California issued Physician and Surgeon's Certificate Number G53590 to Thomas A. Daniel, MD (Respondent). The Certificate was in full force and effect at all times relevant to the charges brought herein and will expire on February 29, 2008, unless renewed.

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1 **JURISDICTION**

2 3. This Accusation is brought before the Division of Medical Quality
3 (Medical Board of California) for the Medical Board of California, Department of Consumer
4 Affairs, under the authority of the following laws. All section references are to the Business and
5 Professions Code unless otherwise indicated.

6 4. Section 2227 of the Code provides that a licensee who is found guilty
7 under the Medical Practice Act may have his or her license revoked, suspended for a period not
8 to exceed one year, placed on probation and required to pay the costs of probation monitoring, or
9 such other action taken in relation to discipline as the Division deems proper.

10 5 Section 2004 of the Code states:

11 “The Division of Medical Quality shall have the responsibility for the following:

12 “(a) The enforcement of the disciplinary and criminal provisions of the Medical
13 Practice Act.

14 “(b) The administration and hearing of disciplinary actions.

15 “(c) Carrying out disciplinary actions appropriate to findings made by a medical
16 quality review committee, the division, or an administrative law judge.

17 “(d) Suspending, revoking, or otherwise limiting certificates after the conclusion
18 of disciplinary actions.

19 “(e) Reviewing the quality of medical practice carried out by physician and
20 surgeon certificate holders under the jurisdiction of the board.”

21 6. Section 820 of the Code states:

22 “Whenever it appears that any person holding a license, certificate or
23 permit under this division or under any initiative act referred to in this division
24 may be unable to practice his or her profession safely because the licentiate's
25 ability to practice is impaired due to mental illness, or physical illness affecting
26 competency, the licensing agency may order the licentiate to be examined by one
27 or more physicians and surgeons or psychologists designated by the agency. The
28 report of the examiners shall be made available to the licentiate and may be

1 received as direct evidence in proceedings conducted pursuant to Section 822.”

2 7. Section 822 of the Code states in pertinent part as follows:

3 “If a licensing agency determines that its licentiate's ability to practice his
4 or her profession safely is impaired because the licentiate is mentally ill, or
5 physically ill affecting competency, the licensing agency may take action by any
6 one of the following methods:

7 “(a) Revoking the licentiate’s certificate or license.

8 “(b) Suspending the licentiate’s right to practice.

9 “(c) Placing the licentiate on probation.

10 “(d) Taking such other action in relation to the licentiate as the
11 licensing agency in its discretion deems proper.”

12 * * *

13 8. Section 2238 provides that “[a] violation of any federal statute
14 or federal regulation or any of the statutes or regulations of this state regulating dangerous drugs
15 or controlled substances constitutes unprofessional conduct.”

16 9. Subdivision (a) of section 2239 provides as follows:

17 “The use or prescribing for or administering to himself or herself, of any
18 controlled substance; or the use of any of the dangerous drugs specified in Section
19 4022, or of alcoholic beverages, to the extent, or in such a manner as to be
20 dangerous or injurious to the licensee, or to any other person or to the public, or to
21 the extent that such use impairs the ability of the licensee to practice medicine
22 safely or more than one misdemeanor or any felony involving the use,
23 consumption, or self-administration of any of the substances referred to in this
24 section, or any combination thereof, constitutes unprofessional conduct. The
25 record of the conviction is conclusive evidence of such unprofessional conduct.”

26 10. Health and Safety Code section 11170 provides that “[n]o person shall
27 prescribe, administer, or furnish a controlled substance for himself.”

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FIRST CAUSE FOR DISCIPLINE
[Bus. & Prof. Code, §§ 820, 822]
(Unsafe Practice of Medicine Due to Mental Illness)

11. Respondent is subject to disciplinary action under sections 820 and 822 in that his ability to practice medicine is impaired due to mental illness. The circumstances are as follows:

12. In 2003, Respondent, a child psychiatrist, opened a private practice, but closed it in February 2005. In February 2005, a former employee filed a complaint against Respondent, alleging that he made inappropriate comments about his patients, divulged confidential information about them, and was "disorganized and scattered," sometimes being up to two hours late for patients or not showing up at all for appointments. Patients complained that Respondent was "wired and weird."

13. On May 15, 2006, as part of the investigation against Respondent, MBC Senior Investigators (Sr. Inv.) Roberto Moya and Anna Vanderveen went to Respondent's home, but was told that he was not there. Later that afternoon, Respondent called Sr. Inv. Moya from a Costco Pharmacy, and Sr. Inv. Moya explained that a complaint had been filed against him by a former employee. During their conversation, Sr. Inv. Moya overheard Respondent explain to the pharmacist that it was okay for him to self-prescribe. Sr. Inv. Moya then arranged for a meeting at 3:00 p.m.

14. Respondent arrived at 3:46 p.m. and was accompanied by M.K., a former patient and girlfriend. Sr. Inv. Moya explained that the investigation was also based on drug use allegations and asked for a urine sample. Respondent was unable to provide a urine sample. Respondent invited Sr. Inv. Moya to his condominium where he could try again to provide a urine sample. Sr. Inv. Moya agreed and met Respondent at his condominium at approximately 5:45 p.m.

15. Respondent invited Sr. Inv. Moya inside and apologized for the "big mess." Respondent was again unable to provide a urine sample after two attempts. Sr. Inv. Moya turned his attention to Respondent's private medical practice, which he operated out of his condominium, and asked to see where he kept his patient files. Respondent took Sr. Inv. Moya

1 to his garage and showed him the file cabinet where he kept his files. They returned to the
2 condominium, and Respondent made one more unsuccessful attempt to provide a urine sample.
3 Sr. Inv. Moya rescheduled for another urine sample attempt for the following day, May 16, 2006,
4 and left the condominium at approximately 6:15 p.m.

5 16. On May 16, 2006, Respondent provided a urine sample. On May 22,
6 2006, Sr. Inv. Moya received Respondent's lab results. The results were positive for
7 amphetamine.

8 17. Pharmacy audits conducted by Sr. Inv. Anna Vanderveen and Sr. Inv.
9 Moya revealed that Respondent has self-prescribed the following medications:

Date	Description	Days Supply	Pharmacy
01/27/05	Belladonna/Phenobarb TA [Generic for Donnatal]	5	Rite Aid
01/27/05	Promethazine 25 mg Tabl [Generic for Phenergan]	5	Rite Aid
06/07/05	Hydrochlorothiazide 25	30	Rite Aid
06/09/05	Requip 2 mg Tabl	12	Rite Aid
07/07/05	Clobetasol 0.05% Ointm	5	Rite Aid
07/07/05	Requip 2 mg Tabl	18	Rite Aid
07/07/05	Hydroxyzine Pam 25 mg C	10	Rite Aid
02/13/06	Tramadol HCL 50 mg Tabl	7	Rite Aid
02/26/06	Ketorolac 10 mg Tabl	1	Rite Aid
02/26/06	Hydrochlorothiazide 25	30	Rite Aid
04/07/06	Toprol 100 mg	30	Costco
04/07/06	Hydrochlorothiazide 25 mg	30	Costco
05/15/06	Gabapentin 600 mg	30	Costco
07/11/06	Belladonna/Phenobarb TA	2	Rite Aid
09/27/06	Promethazine 25 mg Tabl	7	Rite Aid

18. Amphetamines are a Schedule II controlled substance.

1 19. On March 9, 2007, an Order Granting a Petition to Compel a Psychiatric
2 Examination was issued against Respondent, and he was subsequently examined by Kent B.
3 Hart, M.D., a board-certified psychiatrist. Respondent was diagnosed with the following clinical
4 disorders (Axis I): (1) anxiety disorder; (2) dysthymia; and (3) bipolar II. Respondent was
5 further diagnosed with the following personality disorder (Axis II): personality disorder NOS.
6 Respondent is not seeing a psychiatrist and extensively uses medications, which puts him at risk
7 in that it may interfere with his ability to stay focused on patient discourse and impair his
8 judgment concerning patients. Dr. Hart opined that Respondent is too beleaguered with
9 psychiatric problems, legal problems, anxiety, depression, and financial problems to enable the
10 mature judgment for him to provide the quality of care that patients need. Dr. Hart further
11 opined that Respondent is unsafe to practice medicine unless he practices in a very structured
12 environment where he can be closely monitored.

13 20. Respondent is unsafe to practice medicine within the meaning of section
14 822 of the Code because of his psychiatric problems, including bipolar, cyclothymic, attention
15 deficit, depressive, and adjustment disorders.

16 **SECOND CAUSE FOR DISCIPLINE**
17 **(Use/Self-Prescribing/Administering to Himself of a Controlled Substance)**
18 **[Bus. & Prof. Code, § 2239(a)]**

19 21. Respondent is subject to disciplinary action under section 2239,
20 subdivision (a), of the Code in that he used, self-prescribed and/or administered to himself
21 controlled substances. The circumstances are as follows:

22 22. Complainant re-alleges paragraphs 13 and 16 through 18 above, as if fully
23 set forth at this point.

24 23. Respondent's use, self-prescribing and/or administering to himself
25 controlled substances constitutes unprofessional conduct within the meaning of Code section
26 2239, subdivision (a) of the Medical Practice Act.

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1 **THIRD CAUSE FOR DISCIPLINE**

2 **(Violation of Drug Statutes)**

3 **[Bus. & Prof. Code, § 2238 in Conjunction with Health & Saf. Code, § 11170]**

4 24. Respondent is subject to disciplinary action under section 2238 of the
5 Code in that he violated a state drug statute regulating dangerous drugs or controlled substances.
6 The circumstances are as follows:

7 25. Complainant re-alleges paragraphs 13 and 16 through 18 above, as if fully
8 set forth at this point.

9 26. Respondent's conduct of furnishing and/or administering controlled
10 substances to himself is a violation of Health and Safety Code section 11170.

11 27. Respondent's violation of the above-referenced state drug statute
12 regulating dangerous drugs or controlled substances constitutes unprofessional conduct within
13 the meaning of section 2238 of the Medical Practice Act.

14 **PRAYER**

15 WHEREFORE, Complainant requests that a hearing be held on the matters herein
16 alleged, and that following the hearing, the Division of Medical Quality issue a decision:

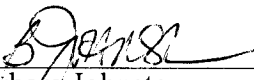
17 1. Revoking or suspending Physician and Surgeon's Certificate Number
18 G53590, issued to Thomas A. Daniel, MD.;

19 2. Revoking, suspending or denying approval of Thomas A. Daniel, MD's
20 authority to supervise physician's assistants, pursuant to section 3527 of the Code;

21 3. Ordering Thomas A. Daniel, MD to pay the Division of Medical Quality
22 the reasonable costs of probation monitoring if placed on probation; and

23 4. Taking such other and further action as deemed necessary and proper.

24 DATED: September 6, 2007

25 
26 Barbara Johnston
27 Executive Director
28 Medical Board of California
Department of Consumer Affairs
State of California
Complainant